both sides. *Goodyear* v. *H. J. Koehler Sporting Goods Co.* (N. Y. 1913) 143 N. Y. S. 1046.

Mutuality exists when each party to a contract is subject to an obligation which is enforceable. The defendant in the above case, by exempting itself from liability in express words, overreached itself, and freed the plaintiff from any obligation which defendant could enforce, for if the dissenting judge's construction be adopted, the court makes a new contract for the parties contrary to their express words. It would seem, however, that both parties having acted under the contract and, in a measure, having received that for which they bargained, the contract was completed, and was broken by plaintiff when he refused to take the remaining cars which he agreed to buy. A contract may be unilateral at its inception and become valid by the performance of it by the party originally not bound by it. *Storm* v. *United States,* 94 U. S. 76, 24 L. Ed. 42; *Fontain* v. *Baxley,* 17 S. E. 1015, 90 Ga. 416. A contract almost identical with that in the principal case was considered in the *Velie Motor Car Co.* v. *Kopmeier Motor Car Co.,* 194 Fed. 324; in which the plaintiff was the employer and the defendant was the agent who failed to act under the contract. The court held the contract unilateral and void. The principal case is distinguished from the last cited case, by the fact that both parties acted under the agreement in it. *Buick Motor Co.* v. *Thompson,* 138 Ga. 282, 75 S. E. 354; was the case of an offer by the Motor Company, the defendant, to sell to plaintiff, and make him its agent in that county. The plaintiff, though not bound to do anything by the words of the contract, accepted it, and sold some cars which defendant failed to deliver. The Court, by LUMPKIN J., held that though unilateral at its inception, the contract became binding when plaintiff acted under it, but only so far as he had acted. In so far as it was executory, it was probably still unilateral. If it were not that the dissenting opinion in the principal case would, if adopted, result in making a new contract for the parties, it seems that it would be the more equitable of the two opinions under the rule adopted where the party who is not bound, performs under a unilateral contract.

COVENANTS—PERSONS ENTITLED TO ENFORCE—COVENANTS AS TO USE OF LAND.—Complaints conveyed a lot to R, the grantee covenanting for himself and assigns not to erect any building within 30 ft. of the side line of the lot. R. conveyed the lot to his wife, who took with notice of the covenant. This bill was brought to enjoin the wife from violating the covenant. It was not shown that at the time of the first grant or at any later time complainants owned any land in the vicinity other than that conveyed. *Held,* that the defendant was bound by the covenant and should be enjoined from violating it. *Van Sant et al.* v. *Rose et al.* (Ill. 1913) 103 N. E. 194.

The precise question involved in this case has seldom been before the courts, either in this country or in England. It is well settled that, as a general rule, restrictive covenants, if not against public policy, will be enforced against subsequent grantees, if they take with notice, or as volunteers, even though the covenant is not such as would run with the land at law. WASH-

BURN, REAL PROP., (6th ed.) § 124 et seq. The cases in which this rule has been applied have been, with few exceptions, cases in which the covenant was made either for the benefit of other land owned by the covenantee, or else cases of general building plans where the restrictions were put on each lot for the benefit of the others. In such cases the covenant is not personal but is in the nature of an easement upon a servient tenement for the benefit of the dominant. GALE. EASEMENTS. 57. When, however, as in the principal case, the covenant is personal as to the covenantee and at the same time puts a burden upon the land conveyed, the question arises as to whether the entire covenant is not personal on both sides. If it is so considered, the result would logically follow that such an action as was brought here could not be maintained, even though the subsequent grantee takes with notice. The court answered this defense principally on the authority of *Hays* v. *St. Paul M. E. Church,* 196 Ill. 633. It is certain that the court in that case was not forced to pass upon the exact queston involved here, and it is not clear that even the dicta would support the inferences which the court in the principal case drew from it. Perhaps the only case in this country exactly in point is *Dana* v. *Wentworth,* 111 Mass. 291, which supports the defendants' contention, but neither reasons nor authorities were given by the court in that case in support of its decision. In the following cases decided in this country there have been dicta contra to the principal decision; *Hano* v. *Bigelow,* 155 Mass. 341; *Inhabitants of Middlefield* v. *Church Mills Knitting Co.,* 160 Mass. 267; *Los Angeles Univ.* v. *Swarth,* 107 Fed. 298. The question arose in England in the cases of *Catt* v. *Tourle,* [1869] 4 Ch. 654, and *Osborne* v. *Bradley* [1903], 2 Ch. 446, and was decided in accord with the principal case. There seems to be much doubt, however, as to whether they can be said to have settled the law on the point because of the dicta in later decisions. *Formby* v. *Barker,* [1913] 2 Ch. 539. See JOLLY, RESTRICTIVE COVENANTS. 21 et seq. That such decisions would not be approved were the question to come before the House of Lords is to be inferred from the dicta on the tied-public-house cases by some of the Lords in *Earl of Zitt* v. *Hislop,* 7 A. C. at page 447, and *Noakes* v. *Rice,* 27 A. C. at p. 35.

CRIMINAL PROCEDURE—CONTINUANCE.—A material witness was absent on account of illness. The defendant moved for a continuance, which was granted. Thereupon the state, through its attorney, proposed to admit that the witness, if present, would testify to the facts set up in the affidavit in support of the motion. Upon this admission, the court, over the objection of the defendant, ruled that the defendant should proceed to trial. This ruling was assigned as error. *Held,* that the accused has a right to every benefit from the presence of witness, and to deny him the continuance was to deny him his constitutional right to compulsory process for attendance of witnesses. *Tiner* v. *State,* (Ark. 1913) 161 S. W. 195.

This case followed the decisions in *Jones v. State,* 99 Ark. 394, and *Graham* v. *State,* 50 Ark. 161. These cases held that a continuance could not be denied unless the state would admit the truth of the facts set up in the affidavit. Nearly every constitution guarantees the accused the right to com-